

GOVERNMENT OF THE DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT



Application No. 14477 of First Baptist Church of Washington, D.C., pursuant to Sub-section 8207.2 of the Zoning Regulations, for a special exception under Paragraph 3101.48 to continue to operate a parking lot in an R-5-B District at premises 1513 O Street, N.W., (Square 195), Lots 74, 75, 830, 840, 71 and 111).

HEARING DATES: September 24, 1986 and November 19, 1986
DECISION DATE: December 3, 1986

FINDINGS OF FACT:

1. The Board at the public hearing of September 24, 1986 granted the applicant's request to continue the hearing date for the application until November 19, 1986.
2. The parking lot is located at the northwest corner of the intersection of 15th and "O" Streets, N.W. It is known as premises 1513 O Street, N.W. and is in an R-5-B District.
3. The parking lot is owned by the applicant, First Baptist Church (hereinafter the Church), and is leased to Super Service Parking, Inc.
4. The parking lot is located in a mixed-use neighborhood, the predominant uses being residential and institutional. Institutional uses line Massachusetts Avenue and 16th Street. High density apartment buildings and hotels are concentrated along Rhode Island Avenue east of Scott Circle. Extensive lower density residential development, consisting primarily of flats and row houses, is located north and west of the subject square. East of 15th Street, the character of the area changes. The properties therein are devoted to light industrial and auto related uses with mixed residential. The subject square includes a mixture of residential and institutional uses. Some row structures within the square have been converted from residential to office use. There are a number of commuter parking lots located in and around the area.
5. BZA order No. 14061 dated February 19, 1986, reaffirmed the grant of the special exception under Paragraph 3104.44 of the Zoning Regulations to operate a parking lot at the site until May 11, 1986.

6. The Board approved an application on July 15, 1959, to establish a temporary parking lot for five years on Lots 74 and 830 in BZA Order 5583. The Board approved applications on October 10, 1950, to establish temporary parking on lots 108, 109 and 110 for five years in BZA Order 6088, 6089 and 6090. On March 30, 1961, the Board granted permission to continue operation of the parking lot on lots 74, 75 and 830 for additional five years in BZA Order No. 6239. The Board granted permission on November 29, 1966, to continue operation of that lot and the parking lot on lots 108, 109 and 110 for five years in BZA Order 8984. The Board on February 11, 1972, granted permission to continue operation of the lot for another five years and to establish a temporary parking lot on Lots 71 and 111. In BZA Order No. 12387, dated September 21, 1977, the Board granted the continuance of the parking lot for two years.

7. In BZA Order No. 13096, dated April 7, 1980, the Board denied the application for the continued use of the parking lot on the grounds that the applicant has not met the burden of proof. The applicant appealed the Order to the District of Columbia Court of Appeals. The Court reversed and remanded the case on the grounds that the Board's Findings and conclusions were deficient. The application was reheard de novo on July 29, 1981. The Board, in its order dated March 17, 1982, again denied the application on the grounds that the burden of proof had not been met in that the existence of the parking lot resulted in dangerous traffic conditions and adverse affects on the neighborhood. The Order was appealed to the D.C. Court of Appeals. The Court, in a memorandum opinion and judgement dated April 18, 1983, affirmed the Board's Order.

8. Pursuant to Sub-section 8207.2 the applicant now seeks a special exception under Paragraph 3101.48 to continue to operate a parking lot on the site under the current management.

9. The subject parking lot is approximately 18,600 square feet in area. It is designed to accommodate 84 cars. The lot will be operated as a commercial parking lot from 7:00 A.M. to 6:30 P.M., Monday through Friday. The lot will be an attendant controlled facility. Ninety percent of the commercial parking will be commuter parking.

10. On Wednesday nights and on Sunday, the parking lot will be used by the applicant for the members of its Church.

11. At all other times after the closing of business for the day, the applicant offered to make the lot available, without charge, for all uses of the neighborhood.

12. The subject lot is one block removed from the church, which is located at 16th and O Streets.

13. The applicant also owns a lot that is adjacent to the church in the 1600 block of O Street that accommodates cars for the church members. On this latter lot, the applicant has erected an educational building that will be used for church purposes. There is no underground parking in the new building since it was too expensive to construct. When the educational building was constructed, forty-four spaces were restored for the parish use.

14. The applicant proposes to retain the subject lot to service its members' parking needs. Ninety percent of the church membership uses automobiles to arrive at the church.

15. The number of church members is estimated at 950, of whom some 450 attend Sunday services. On Sunday, approximately 140 spaces in the aggregate are required to accommodate the parishioners. On Wednesday, approximately 100 persons attend classes. There is less demand for parking spaces on Wednesday nights.

16. The church has other functions which require the use of the subject parking lot. The church has a day care center for forty children which operates Monday through Friday. The parents of the children park their cars on both of the church's parking lots in bringing their children to and picking them up from the center. There are twelve staff persons involved with the operation of the day care center. The church also sponsors a St. Elizabeth's weekday program and a Bread for the City program, all of which generate a need for more parking than the site adjacent to the church can provide.

17. The church site provides forty-four parking spaces. Eight of the spaces are reserved for the church staff. The site adjacent to the church by itself cannot accommodate the needs of the congregation on Sundays and Wednesday evenings.

18. Many members of the congregation are elderly and reside outside the District of Columbia. They cannot and do not use the Metro or bus services available to the site.

19. On Sundays, the Grace Reformed Church, located on 15th Street across from the subject lot, is permitted to use parking spaces on the subject lot subject to the applicant's needs.

20. The applicant will keep the lot clear of refuse and debris and maintain any landscaping in a healthy growing condition.

21. By memorandum dated July 16, 1986 the Department of Public Works (DPW) reported that it reviewed the application.

It reported that its site inspection indicated that the lot is adequately maintained but lacks proper screening to separate the residential neighborhoods. The DPW had no objection to continuing the use of the parking lot provided that the applicant provides adequate screening. The Board concurs with the recommendation of the DPW.

22. By letter dated September 16, 1986 Advisory Neighborhood Commission (ANC) 2B reported that it voted to support the application provided that it received a letter from the First Baptist church stating that (a) the church intends to acquire underground parking in the National Wildlife Federations new office building (b) if the parking problems are satisfied at the termination of the special exception the church will make an effort to developed the lot for residential use and (c) the lot will be locked during times that it is unattended.

23. By letter dated November 19, 1986 the Dupont Circle Citizens Association reported that it opposed the application since surface parking lots in residential neighborhoods are unsightly, add to traffic congestion and tend to be a haven for perpetrators of street crime. At the public hearing a DCCA representative testified that members of the Association have not observed specific occurrence at these negative impacts on the lot and that no current operator had been running a better operation than was the case previously but that a parking lot is not an appropriate use in an R-5-B District.

24. Several neighbors of the site testified in support of the application stating that the parking lot was needed in the neighborhood. They also testified that the current operation of the lot is a credit to the neighborhood and neat and clean in appearance. One neighbor reported that the lot did not create a nuisance in the neighborhood. All agreed that the lighting was encouraging and contributed to the safety of the area.

25. The Residential Action Coalition and a neighboring property owner also opposed the application. In addition to the reasons cited by the DCCA, issues they raised were as follow:

- a. The lot's surface is no longer impervious to weather and wheel stops are not provided as required by section 7404.11.
- b. The lot attracted illegal actions such as prostitution and drug use. The lot also provides hiding places for muggers and other street criminals.
- c. The parking lot is not needed by the church

because the neighborhood is well served by mass transit and the church has now constructed an accessory parking lot on its own property in the 1600 block of O Street. Less than twenty cars use the lot for church parking on Sunday morning.

- d. When Mr. Lyon, a co-owner of Super Service, Inc., was the lot's operator as an employee of PMI, Inc., objectionable traffic conditions existed on and flowed from the lot including double parking and blocked driveways, forcing pedestrians to walk in the street. Testimony and photographs establish that Mr. Lyons still permits these dangerous and objectionable traffic conditions to occur, in that cars park on the public space over sidewalks, and backup into busy 15th Street.
- e. Mr. Lyons has permitted two cars, one van, and one panel truck to be abandoned on the lot. Two of those vehicles, with far-expired license plates, have been on the lot for over a year.
- f. In 1984, and again in 1985, the Board granted a special short-term special exception to the church subject to 16 stringent conditions. At that time the Board cautioned that failure to abide by those conditions would result in denial of continued use of the lot. The neighboring property owner introduced testimony and photographs claiming that Mr. Lyons has been in continual, substantial violation of those conditions.
- g. Based on the church's representation that at the end of a two-year period the church would sell the subject lot or development consistent with its existing R-5-B zoning, Advisory Neighborhood Commission 2B supported the church's special exception. At the hearing the church declined to reiterate its representation to the ANC on the record or to request that its special exception be conditioned on future non-renewal. Thus, the church appears to have deceived ANC - 2B and the Board cannot credit ANC - 2B's position with the "great weight" to which it is normally entitled.

26. In addressing the issues and concerns enumerated above the Board finds that:

- a. It has received no substantive evidence that the surface of the parking lot is not impervious to weather and as a result of discussions with the DPW the applicant has erected a chain link fence around the perimeter of the lot instead of providing wheel stops.

- b. The opposition has made many allegations that are not supported by the weight of evidence adduced at the public hearing, particularly allegations concerning crime, pollution and traffic. Evidence of such in prior applications cannot be imputed to the subject lessees/operator. This is not to say that the Board condones the church's attitude of apparent disregard for the maintenance of the site while the lot was inoperative.
- c. The church has testified that the parking lot is required by church members.
- d. The recently erected chain link fence prevents cars from "spilling over" from the lot and parking on public space.
- e. The cars with expired tags are the personal vehicles of the lots operator.
- f. Condition No. 9 of the previous order has not been complied with at the request of neighbors who desire that the lights remain turned on as a safety feature when the lot is not in operation. Condition No. 11 is addressed above.
- g. The ANC reported its conditional approval in its letter addressing the application.

CONCLUSION OF LAW AND OPINION:

The Board concludes that the applicant is seeking a special exception, the granting of which requires a showing through substantial evidence that the applicant has complied with the requirements of Paragraph 3101.48 and that the relief requested under Sub-section 8207.2 can be granted as in harmony with the general purpose and intent of the Zoning Regulations and will not tend to affect adversely the use of neighboring property. The Board concludes that the applicant has met its burden of proof. The Board is of the opinion that the grant, as conditioned below, will create no dangerous or otherwise objectionable traffic conditions. The present character and future development of the neighborhood will not be adversely affected and the parking lot will be reasonably necessary and convenient to other uses in the vicinity. The Board notes that the lot was in operation prior to the adoption of Paragraph 3101.48 and is thus a non-conforming lot. The Board notes that much of the opposition centered around past operations and effects of a parking lot on this property. Those facts are immaterial to the subject application. The Board is of the opinion that the lot is well maintained and operated responsibly.

The Board cautions the applicant and the operator that failure to abide by all the conditions set forth below and

failure to operate the lot in a manner which is not objectionable, will result in denial of continued use of the lot. The Board concludes that it has accorded to the Advisory Neighborhood Commission the "great weight" to which it is entitled. Accordingly, it is ORDERED that the application is GRANTED SUBJECT to the following CONDITIONS:

1. Approval shall be for a period terminating on May 11, 1988.
2. Operation of the subject lot is limited to Super Service Parking, Inc, only.
3. The hours of commercial operation of the lot shall not exceed from 7:00 A.M. to 6:30 P.M., Monday through Friday.
4. The use of the lot during hours it is not used for commercial parking shall be limited to parking for church-related functions only.
5. The entrance to the parking lot shall be secured by a gate, chain or cable during all hours that the lot is not in use by the church or the commercial operation as limited by condition No.3
6. The parking lot shall be posted with a sign which limits the use of the lot to Super Service Inc., Co., and church related functions.
7. An attendant shall be present at all times during the hours of operation of the subject lot.
8. The lot shall be striped so as to designate the location of all parking spaces.
9. Lighting shall be provided sufficient to illuminate all areas of the lot. Such illumination shall be so arranged that all direct rays of such lighting are confined to the surface of the parking lot.
10. Trash and debris shall be removed from the lot at least twice daily from Monday through Friday, before and after the hours of commercial operation of the lot. Trash and debris shall be removed at least once daily on weekends and holidays.
11. The applicant shall provide a chain link fence along all sides of the lot which do not immediately abut the walls of existing buildings.
12. All areas devoted to driveways, access lanes, and parking areas shall be maintained with a paving of material forming an all-weather impervious surface.

13. Bumper stops shall be erected and maintained for the protection of all adjoining buildings.
14. No vehicle or any part thereof shall be permitted to project over any lot or building line or on or over the public space.
15. All parts of the lot shall be kept free of refuse or debris and shall be paved or landscaped. Landscaping shall be maintained in a healthy growing condition and in a neat and orderly appearance.
16. No other use shall be conducted from or upon the premises and no structure other than an attendant's shelter shall be erected or used upon the premises unless such use or structure is otherwise permitted in the zoning district in which the parking lot is located.

VOTE: 5-0 (Paula L. Jewell, William F. McIntosh, Charles R. Norris, and Carrie L. Thornhill to grant; and John G. Parsons to grant by proxy).

BY ORDER OF THE D.C. BOARD OF ZONING ADJUSTMENT

ATTESTED BY:


EDWARD L. CURRY
Acting Executive Director

FINAL DATE OF ORDER: MAR 5 1987

UNDER SUB-SECTION 8204.3 OF THE ZONING REGULATIONS, "NO DECISION OR ORDER OF THE BOARD SHALL TAKE EFFECT UNTIL TEN DAYS AFTER HAVING BECOME FINAL PURSUANT TO THE SUPPLEMENTAL RULES OF PRACTICE AND PROCEDURE BEFORE THE BOARD OF ZONING ADJUSTMENT."

THIS ORDER OF THE BOARD IS VALID FOR A PERIOD OF SIX MONTHS AFTER THE EFFECTIVE DATE OF THIS ORDER, UNLESS WITHIN SUCH PERIOD AN APPLICATION FOR A BUILDING PERMIT OR CERTIFICATE OF OCCUPANCY IS FILED WITH THE DEPARTMENT OF CONSUMER AND REGULATORY AFFAIRS.

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